

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEADERSHIP STUDIES, INC., dba
CENTER FOR LEADERSHIP
STUDIES, a California corporation,

CASE NO. 15cv1831-WQH-KSC
ORDER

Plaintiff,

v.

BLANCHARD TRAINING AND
DEVELOPMENT, INC., a California
corporation, and Does 1-10, inclusive,

Defendant.

HAYES, Judge:

The matter before the Court is the Motion to Amend/Correct Second Amended Complaint and File Third Amended Complaint (ECF No. 44) filed by Plaintiff Leadership Studies, Inc. (“Plaintiff”).

I. Background

On August 17, 2015, Plaintiff Leadership Studies commenced this action by filing the Complaint. (ECF No. 1). On November 9, 2015, Plaintiff filed the First Amended Complaint. (ECF No. 10). On March 4, 2016, the Court granted Defendant Blanchard Training and Development, Inc.’s (“Defendant’s”) Partial Motion to Dismiss without prejudice. On April 13, 2016, Plaintiff filed the Second Amended Complaint. (ECF No. 27). On April 27, 2016, Defendant filed the Answer to the Second Amended

1 Complaint and included a counterclaim and affirmative defenses. (ECF No. 28).¹ On
 2 August 29, 2016, Plaintiff filed the Motion to Amend/Correct the Second Amended
 3 Complaint and File Third Amended Complaint. (ECF No. 44). On September 12,
 4 2016, Defendant filed a response. (ECF No. 45). On September 19, 2016, Plaintiff
 5 filed a reply. (ECF No. 46).

6 **II. Discussion**

7 Federal Rule of Civil Procedure 15 mandates that leave to amend “be freely given
 8 when justice so requires.” Fed. R. Civ. P. 15(a). “This policy is to be applied with
 9 extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th
 10 Cir. 2003) (quotation omitted). In *Foman v. Davis*, 371 U.S. 178 (1962), the Supreme
 11 Court offered several factors for district courts to consider in deciding whether to grant
 12 a motion to amend under Rule 15(a):

13 In the absence of any apparent or declared reason—such as undue delay,
 14 bad faith or dilatory motive on the part of the movant, repeated failure to
 15 cure deficiencies by amendments previously allowed, undue prejudice to
 16 the opposing party by virtue of allowance of the amendment, futility of
 17 amendment, etc.—the leave sought should, as the rules require, be “freely
 18 given.”

19 *Foman*, 371 U.S. at 182; see also *Smith v. Pac. Prop. Dev. Co.*, 358 F.3d 1097, 1101
 20 (9th Cir. 2004). “Not all of the [*Foman*] factors merit equal weight. As this circuit and
 21 others have held, it is the consideration of prejudice to the opposing party that carries
 22 the greatest weight.” *Eminence Capital*, 316 F.3d at 1052 (citations omitted). “The
 23 party opposing amendment bears the burden of showing prejudice.” *DCD Programs,*
 24 *Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987). “Absent prejudice, or a strong
 25 showing of any of the remaining *Foman* factors, there exists a presumption under Rule
 26 15(a) in favor of granting leave to amend.” *Eminence Capital*, 316 F.3d at 1052.

27 After review of the Motion to Amend/Correct the Second Amended Complaint

28 ¹ On May 23, 2016, Plaintiff filed a Motion to Dismiss the counterclaim and various affirmative defenses. (ECF No. 30). Defendant filed a response on June 21, 2016. (ECF No. 34). Plaintiff filed a reply on June 28, 2016. (ECF No. 36). The Motion to Dismiss the counterclaim and affirmative defenses has been fully plead and is before the Court. This Order does not address Plaintiff’s Motion to Dismiss.

1 and File Third Amended Complaint and all related filings, the Court concludes that
2 Defendant has not made a sufficiently strong showing of the *Foman* factors to
3 overcome the presumption of Rule 15(a) in favor of granting leave to amend. *See*
4 *Eminence Capital*, 316 F.3d at 1052.

5 **III. Conclusion**

6 IT IS HEREBY ORDERED that the Motion to Amend/Correct Second Amended
7 Complaint and File Third Amended Complaint (ECF No. 44) is GRANTED. Plaintiff
8 shall file the proposed third amended complaint attached to the motion (ECF No. 44-3)
9 **within ten (10) days** from the date of this order.

10 DATED: October 27, 2016

11 
12 **WILLIAM Q. HAYES**
13 United States District Judge

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